

To: Dissertation Council and Science Committee  
at JSC “M.S. Narikbayev KAZGUU University”  
Korgalzhyn 8, Astana, Kazakhstan

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### RECOMMENDATION LETTER

to the PhD dissertation of Bagdat G. Kuzhatov on the topic “Revision of balance between regulatory rights and investment protection under fair and equitable treatment: The Energy Charter Treaty framework”.

I am writing this letter of recommendation in support of Bagdat Kuzhatov’s application to defend his PhD dissertation “Revision of balance between regulatory rights and investment protection under fair and equitable treatment: The Energy Charter Treaty framework”.

I am a counsel in White & Case global M&A and Corporate Practice Group based in Astana. My core expertise includes consultation and representation of various government bodies, international investors, and Kazakhstani companies on civil law, corporate law, subsoil use regulation, and energy and environmental law matters. I have over 15 years’ experience in the oil & gas sector, including a broad experience in legislative work coordination. I am an author and co-author of a number of publications, including the recently published Commentary to the Subsoil and Subsoil Use Code.

I have acted as a supervisor for Mr. Kuzhatov from the beginning of his research work. I provided all academic guidance, supervision work, and support in reviewing and commenting on various drafts of the dissertation from the beginning. The research work was completed relatively in a short time, within 3,5 years, for such a complex topic.

My general comments and recommendations are hereinafter.

First, it is worth mentioning that at an early stage of the research Mr. Kuzhatov involved leading international experts in the field of International Investment Law and

International Energy Law such as Professor Peter Cameron from Dundee University and Norah Gallagher from the Queen Mary University of London to provide guidance on this complex research topic.

At a later stage as an international advisor joined Professor Borzu Sabahi from Georgetown University, a leading professional in the field of international investment arbitration. Professor Borzu Sabahi has significantly contributed to the structure of the dissertation and substantiation of arguments from international investment arbitration practice.

Therefore, the dissertation work of Mr. Kuzhatov is verified and completed with the coordination of leading international subject-matter experts.

Second, the chosen topic for the PhD dissertation is complex and controversial in international investment law. Specifically, the topic has obtained considerable importance in light of massive arbitration claims against the EU countries for alleged breach of the stability obligation and frustration of legitimate expectations for measures aimed at the protection of the environment and the transition to clean energy. Therefore, the chosen topic by Mr. Kuzhatov is timely and relevant.

Third, I highly value that Mr. Kuzhatov has conducted an in-depth analysis on:

- the historical origins of competing interests between the regulatory measures and investment protection in the energy sector, particularly, the investment protection mechanisms in concession oil contracts, the evolution of the minimum standard treatment of customary international law, denial of justice, and Bilateral investment treaties in Chapter 1;
- the current norms of Article 10 of the Energy Charter Treaty to identify the lack of balance between emerging regulatory measures of the Contracting Parties and the investment protection under the fair and equitable standard in Chapter 2;
- the emerging regulatory measures of the Contracting Parties aimed at the protection of the environment and the transition to clean energy based on the case studies of the EU and Kazakhstan in Chapter 1;
- various wordings of the fair and equitable treatment standard in different International Investment Agreements for comparison with the Energy Charter Treaty wordings
- various reservation of the right to regulate clauses in Chapter 2;
- on the new proposed wording of fair and equitable treatment and its practical application in Chapter 3.

Fourth, Mr. Kuzhatov has done independent scientific research, applies a solid methodology, and a detailed outline, and has managed to execute and address the relevant topics.

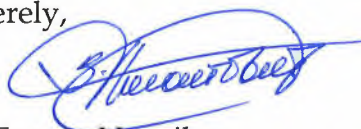
Fifth, during his research, Mr. Kuzhatov analyzed a large number of decisions of the international arbitral tribunals and the contributions of the leading academics on this topic to achieve the objectives of the research.

Sixth, the conducted research work is a valuable contribution to the number of theoretical discussions around the fair and equitable standard, particularly the balancing issue between investment protection and regulatory rights.

Seventh, the research work could be used as practical guidance material for government bodies, investors, and practicing lawyers concerning the scope of fair and equitable treatment and emerging regulatory measures.

Based on the above, the dissertation is recommended for public defense.

Sincerely,



Dr. Zangar Nogaibay

23.09.2022.